

# A Plea to the US Environmental Protection Agency

December 20th, 2022, by Willie Cade, Repair.org

## A Summary

**Noting:** that John Deere publicly acknowledges that the equipment they build is subject to the Clean Air Act, specifically 40 CFR 1068.101 (b) in its letter to Chair Lina Kahn of the Federal Trade Commission (FTC) dated 18-Jul-2021 and publicly reiterated when submitted to the Securities and Exchange Commission (SEC) as EXHIBIT B, dated 15-Oct-2021,<sup>1</sup>

**Mindful:** that 40 CFR 1068.101 (b) (6) in part states, "You must also provide emission-related installation and maintenance instructions," and is consistent with 42 USC 7521 (m) (5) [a.k.a. 202 (m) (5)] and "No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines,"

**Not with standing:** the policy; antithetical to statute, based on misinformation provided by Volkswagen at that time, and that Volkswagen later admitted was false, as stated by Geoff Cooper, then Assistant General Counsel, US EPA in his letter of 17-Jul-2015<sup>2</sup> and ruled against in the DMCA section 1201 Rulemaking, Docket No. 2014-07,

**Recognizing:** that 40 CFR 1068.101 (b) (6) also in part states, "Failure to meet these obligations is prohibited,"

**Aware:** that Table 1 of 40 CFR 1068.101 – Legal Citation for Specific Prohibitions for Determining Maximum Penalty Amounts, the second item listed in the table is "Failure to provide information" as cited in the Clean Air Act, "42 U.S.C. 7522(a)(2),"<sup>3</sup>

**Bearing in mind:** that John Deere is aware of the requirement of 40 CFR 1039.125 (f) to "State clearly in your written maintenance instructions that a repair shop or person of the owner's choosing may maintain, replace, or repair emission-control devices and systems," regardless of any manufacture relationship or approval,

<sup>1</sup> [ HYPERLINK "<https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/greencenturydeere101521-14a8-incoming.pdf>" ]

<sup>2</sup> [ HYPERLINK "[https://copyright.gov/1201/2015/USCO-letters/EPA\\_Letter\\_to\\_USCO\\_re\\_1201.pdf](https://copyright.gov/1201/2015/USCO-letters/EPA_Letter_to_USCO_re_1201.pdf)" ]

<sup>3</sup> [ HYPERLINK "<https://www.govinfo.gov/content/pkg/USCODE-2020-title42/pdf/USCODE-2020-title42-chap85-subchapII-partA-sec7522.pdf>" ]

**Fully Aware:** that John Deere has attested to the US EPA for many years, in accordance and as required by 40 CFR 1039.205 (w), that they “Unconditionally certify that all the engines in the engine family comply with the requirements of this part, other referenced parts of the CFR, and the Clean Air Act,”

**Emphasizing:** that a review of 279 John Deere Operator’s Manuals of products produced and sold in the United States from 1999 onwards, that 130 of those manuals do *NOT* comply with 40 CFR 1039.125 (f) and *ZERO* manuals comply with 42 USC 7541 (c) (3) (A), “The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual,”

**Mindful:** that EPA staff has communicated, verbally to John Deere that their claims that EPA regulations prohibits them from allowing owners to repair their emission systems or choose a third party to do the repairs is false. Additionally, they have been warned that they or their surrogates should no longer say such publicly,

**Noting with Urgency:** that at least 9 state legislatures will be considering Agricultural Right to Repair legislation starting in the next 3 weeks, and

**Underlining:** every day agricultural producers are subject to monopolistic and illegal repair practices by equipment manufactures like John Deere which has and continues to cause significant financial hardship.

### **Therefore, I plead for the following:**

A public statement consistent with 40 CFR 1039.125 (f) by the EPA that it specifically applies to Agricultural Equipment emission systems,

A direct notification to the FTC that John Deere is subject to 1068.101 (b) (6) and that any suggestion otherwise is false and misleading,

A direct notification to the SEC that John Deere is subject to 1068.101 (b) (6) and that any suggestion otherwise is false and misleading.

And finally, assess a civil penalty up to \$44,539 for each engine or piece of equipment in violation, as per 40 CFR 1068.101 (b) (6).